

July 25, 2019

National Credit Union Administration
Gerald Poliquin, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments on Proposed Rule: RBC-Delay of Effective Date

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 250 credit unions and their more than 11 million members.

The NCUA Board is proposing to delay the effective date of the agency's risk-based capital rule (RBC Rule) from January 1, 2020 to January 1, 2022. In proposing the delayed effective date, the Board has said it would use the additional time to holistically and comprehensively evaluate the NCUA's capital standards for federally insured credit unions, including examining whether asset securitization and subordinated debt should be addressed and whether a community bank leverage ratio analog should be integrated into the NCUA's capital standards.

Rather than a delay, the Leagues instead recommend the NCUA Board withdraw the RBC Rule. While the RBC 2015 Final Rule and the 2018 Supplemental Rule are vastly improved over the original proposed rule, we continue to believe that an RBC Rule is unnecessary given the solid performance of natural person credit unions and the National Credit Union Share Insurance Fund (NCUSIF) during the recent financial crisis. Further, we agree with Board Member McWatters' analysis at the time the rule was promulgated that the NCUA does not have the legal authority to implement a two-tier RBC system [\[1\]](#). For these reasons we continue to oppose the RBC Rule and recommend it be withdrawn.

Absent a full withdrawal of the RBC Rule, the Leagues support the proposed delay. We agree that it is appropriate for the Board to "holistically and comprehensively evaluate capital standards for federally insured credit unions." We also encourage the NCUA Board to use the additional time to revisit the agency's legal authority to establish a two-tier risk-based net worth requirement for "complex" credit unions. We also appreciate that the proposed delay will provide covered credit unions (assets greater than \$500 million) with additional time to prepare for the rule's implementation. We respectfully offer the following comments in support of the proposed delay.

Background

At its October 2015 meeting, the NCUA Board issued the 2015 Final Rule to amend Part 702 of the NCUA's prompt corrective action (PCA) regulations to require that credit unions taking certain risks hold capital commensurate with those risks. To provide credit unions and the NCUA time to implement the necessary adjustments, the NCUA initially set a January 1, 2019 effective date.

At its October 2018 meeting, the Board issued the 2018 Supplemental Rule to delay the effective date of the 2015 Final Rule for an additional year, moving the effective date to January 1, 2020. The 2018 Supplemental Rule also amended the definition of "complex" credit union adopted in the 2015 Final Rule for risk-based capital purposes by increasing the assets threshold for coverage from \$100 million to \$500 million.

The Board is now proposing to further delay the effective dates of both the 2015 Final Rule and the 2018 Supplemental Final Rule, moving the effective dates of both rules to January 1, 2022.

Proposed Delay

Asset Securitization

In June 2017, the NCUA Board clarified that federal credit unions have the authority to issue and sell securities as a power incidental to their operation, and, in the case of Government National Mortgage Association (Ginnie Mae) securities, as a power expressly authorized under the Federal Credit Union Act (FCU Act). [2] The extent to which federally insured, state-chartered credit unions may issue and sell securities depends on state law and regulation.

The Leagues agree that the NCUA Board should delay the RBC Rule effective date so that the agency can evaluate and consider capital standards for asset securitization.

Subordinated Debt

Under the final RBC rule, the Board declined to permit credit unions (other than low-income credit unions) to include other supplemental forms of capital in the RBC ratio numerator. However, the Board did issue an advanced notice of proposed rulemaking (ANPR) in February 2017 and specifically requested comments on how supplemental capital can work for risk-based capital purposes.

As we previously commented in response to the 2017 ANPR, the Leagues support permitting all federally insured credit unions (FICUs) to issue supplemental capital that would count towards the risk-based net worth requirement. We strongly believe supplemental capital is an important tool that must be available well in advance of the RBC Rule effective date to allow covered credit unions time to consider the use of any authorized forms of subordinated debt.

Therefore, we support a delay of the effective date of the RBC rule to provide the NCUA Board additional time to propose and finalize an alternative capital rule. We appreciate Chairman Hood's comments and assurance that the agency will issue a proposed alternative capital rule by the end of this year.

Community Bank Leverage Ratio Analog

The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (S. 2155) required the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the other banking agencies), to propose a simplified, alternative measure of capital adequacy for federally insured banks.

In February 2019, the other banking agencies issued a proposed rule that would provide qualifying community banks the option to comply with a simplified measure of capital adequacy. Under the proposal, qualifying community banks that elect to use the community bank leverage ratio (CBLR) framework and that maintain a CBLR greater than 9 percent would be considered to have met the capital requirements for the "well-capitalized" capital category under the other banking agencies' PCA frameworks and would no longer be subject to the generally applicable capital rule.

The NCUA Board believes a delay in the effective date of the RBC rule is appropriate to examine the other banking agencies' recent CBLR proposal and consider whether adopting an equivalent provision for credit unions is appropriate and consistent with the FCU Act. The Leagues completely agree and support a delay in the RBC Rule effective date for this purpose.

FASB Accounting Standard

Credit unions would also benefit from a delay in the RBC Rule effective date as they work to implement the Financial Accounting Standards Board's (FASB's) final current expected credit losses (CECL) accounting standard.

While the FASB has agreed to propose a delay of the CECL standard effective date, the Leagues believe the proposed delay of the RBC Rule will allow credit unions additional time to allocate resources to the implementation of both rules and fully understand the impact of the CECL standard on the credit union's capital. We support a delay in the RBC Rule effective date for this purpose.

Conclusion

The Leagues thank the Board for the opportunity to comment on the proposed delay of the RBC Rule effective date. We support the proposed January 1, 2022 effective date and the objectives the agency seeks to accomplish during the delay. We encourage Board to also use the time to revisit the legal authority for a two-tier capital net worth requirement and whether the RBC Rule is necessary.

Thank you for considering our views and recommendations. If you have any questions regarding our comments, please contact me.

[1] Board Member J. Mark McWatters Statement on the Final Risk-Based Net Worth Rule; available at:
<https://www.ncua.gov/newsroom/Pages/speeches/2015/october/McWatters-Statement-Final-Risk-Based-Net-Worth-Rule.aspx>

[2] NCUA Legal Opinion Letter 17-0670 (June 21, 2017)

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL